

**EXHIBIT 16**

**FILED UNDER SEAL**

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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FAIR ISAAC CORPORATION,

Plaintiff,

v. Court File No. 16-cv-1054 (WMW/DTS)

FEDERAL INSURANCE COMPANY,  
an Indiana corporation, and ACE  
AMERICAN INSURANCE COMPANY,  
a Pennsylvania corporation,

Defendants.  
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VIDEO DEPOSITION OF

THOMAS CARRETTA

MARCH 22, 2019

9:31 A.M.

CONFIDENTIAL

ATTORNEYS' EYES ONLY

<p>1 <b>A. It depends on the context.</b></p> <p>2 Q. Do you know whether that was the case in this</p> <p>3 situation?</p> <p>4 <b>A. There was a salesperson definitely who was</b></p> <p>5 <b>contacting various elements of the Chubb</b></p> <p>6 <b>Corporation. There were several people actually,</b></p> <p>7 <b>and depends on what part of the world they're in,</b></p> <p>8 <b>but there may be other people that are interacting</b></p> <p>9 <b>that might be considered primary. Depends on what</b></p> <p>10 <b>part of the organization.</b></p> <p>11 <b>So if there was an engineer of Chubb &amp;</b></p> <p>12 <b>Sons in the United States entering a log ticket,</b></p> <p>13 <b>he might have a conversation with somebody in the</b></p> <p>14 <b>maintenance organization and that person would be</b></p> <p>15 <b>the primary contact. So it depends on the</b></p> <p>16 <b>purpose, and you haven't defined the purpose.</b></p> <p>17 Q. Okay. Mike Sawyer was the client partner for much</p> <p>18 of the Chubb/FICO relationship, correct?</p> <p>19 <b>A. He was the client partner for the United States</b></p> <p>20 <b>elements of Chubb &amp; Sons, and then if there were</b></p> <p>21 <b>opportunities outside of Chubb &amp; Sons, he would</b></p> <p>22 <b>probably be the person that would contact them,</b></p> <p>23 <b>yes.</b></p> <p>24 Q. And he was -- do you understand that he was sort</p> <p>25 of the primary point person at FICO for Chubb?</p> <p style="text-align: right;">Page 40</p>	<p>1 <b>clause that says we only do it if we have a</b></p> <p>2 <b>written Statement of Work.</b></p> <p>3 Q. And so the significance of that statement, I take</p> <p>4 it, is that you don't believe that chatter between</p> <p>5 low-level people should bind FICO?</p> <p>6 MS. KLIEBENSTEIN: Objection, calls for a</p> <p>7 legal conclusion.</p> <p>8 THE WITNESS: They're not authorized to bind</p> <p>9 us.</p> <p>10 BY MS. JANUS:</p> <p>11 Q. Okay. So statements made by FICO to Chubb by the</p> <p>12 salespeople are not binding on FICO?</p> <p>13 <b>A. Well, by the agreement of the parties, it has to</b></p> <p>14 <b>be written. And so they'll have conversations and</b></p> <p>15 <b>say, I have this problem, do you have a solution;</b></p> <p>16 <b>well, we might be able to do it like this. So</b></p> <p>17 <b>there's engagement going on, but it's not work.</b></p> <p>18 <b>In that sense, it's trying to identify problems,</b></p> <p>19 <b>potential solutions.</b></p> <p>20 <b>If they find a solution that the client,</b></p> <p>21 <b>in this case Chubb &amp; Sons, wants to pursue, they</b></p> <p>22 <b>would enter into a written Statement of Work. So</b></p> <p>23 <b>no, that conversation is not binding. It's just</b></p> <p>24 <b>normal conversation.</b></p> <p>25 Q. What about conversations about uses outside of the</p> <p style="text-align: right;">Page 42</p>
<p>1 <b>A. For the United States.</b></p> <p>2 Q. So Chubb in Europe may have had other point</p> <p>3 people, but for the United States, Mike Sawyer?</p> <p>4 <b>A. Yeah, it's just a matter of geographic</b></p> <p>5 <b>convenience.</b></p> <p>6 Q. Okay. What about Russ Schreiber, is he a</p> <p>7 lower-level person?</p> <p>8 <b>A. Russ was Mike Sawyer's boss, so he's up a level.</b></p> <p>9 Q. Okay. And would you characterize him as a</p> <p>10 lower-level person?</p> <p>11 <b>A. No.</b></p> <p>12 Q. What was his position?</p> <p>13 <b>A. He was the manager for the insurance group.</b></p> <p>14 Q. Now, you said there could be chatter between</p> <p>15 lower-level people or low-level people. What is</p> <p>16 the significance of that to you? Why did you say</p> <p>17 that?</p> <p>18 <b>A. Because our agreement with Chubb was if we're</b></p> <p>19 <b>going to do work for you it has to be in a</b></p> <p>20 <b>Statement of Work, and that's for everybody's</b></p> <p>21 <b>benefit because, you know, we want to make sure</b></p> <p>22 <b>we're operating within the agreement of what we're</b></p> <p>23 <b>going to provide; and Chubb doesn't want us to do</b></p> <p>24 <b>any work that isn't authorized because it can</b></p> <p>25 <b>create problems, and so that's why they have a</b></p> <p style="text-align: right;">Page 41</p>	<p>1 United States being within the scope of the</p> <p>2 license, are those binding?</p> <p>3 <b>A. No, the only things that are binding are what's in</b></p> <p>4 <b>the contracts because that's part of the deal that</b></p> <p>5 <b>Chubb wanted, is they said, we don't want to be</b></p> <p>6 <b>responsible and FICO doesn't want to be</b></p> <p>7 <b>responsible, it must be in a written agreement.</b></p> <p>8 Q. So as far as you're concerned, Mike Sawyer or Russ</p> <p>9 Schreiber could have had as many conversations as</p> <p>10 they wanted with Chubb people saying, go ahead,</p> <p>11 use it in Europe, use it in Canada, we'll help you</p> <p>12 use it in Europe, we'll help you use it in Canada,</p> <p>13 but those aren't binding on FICO. Is that your</p> <p>14 position?</p> <p>15 MS. KLIEBENSTEIN: Objection, calls for</p> <p>16 speculation and I think we're way outside of the</p> <p>17 30(b)(6) topic with this line of questioning. You</p> <p>18 can answer that if you can.</p> <p>19 THE WITNESS: Well, it really is speculating.</p> <p>20 BY MS. JANUS:</p> <p>21 Q. I'm asking the question.</p> <p>22 <b>A. Our people know that they have to have written</b></p> <p>23 <b>Statements of Work or they have to have license</b></p> <p>24 <b>agreements, and we have a policy that says that;</b></p> <p>25 <b>and then we follow the client's policy which --</b></p> <p style="text-align: right;">Page 43</p>

<p>1 our clients all have the same kind of clauses in  2 our agreement. It's a typical thing in  3 everybody's contracts because it defines the  4 boundaries of what's going to be done.  5 People have conversations all the time  6 about how can we potentially solve this and how do  7 we solve this, but you can't solve it until you  8 actually agree to go solve the problem.  9 Q. So in terms of knowledge, we were talking about  10 what FICO's knowledge is of these uses that FICO  11 alleges were outside of the license, and let me  12 ask the question. Do you understand now today  13 that Mike Sawyer was aware of use in the United  14 Kingdom during the term of the license?  15 MS. KLIEBENSTEIN: Objection, calls for  16 speculation.  17 THE WITNESS: FICO's knowledge of use is  18 what's in our contracts, and we reference back to  19 those contracts because it doesn't -- what happens  20 is it doesn't permeate the entity, the FICO  21 entity, until we have contracts because that  22 triggers all kinds of things. So, for instance,  23 there might be software license and then that  24 implicates having maintenance terms, so the  25 maintenance organization is advised of it, the</p> <p style="text-align: right;">Page 44</p>	<p>1 I can't seem to get an answer to it because  2 there's just circular references to agreements.  3 My question then was -- because I can't  4 get an answer to that, I said, did Mike Sawyer  5 know, and --  6 MS. KLIEBENSTEIN: And I just wanted the last  7 question reread, that's all, so he could answer  8 it.  9 MS. JANUS: Okay.  10 (The question was read back by the court  11 reporter.)  12 THE WITNESS: What's "it"?  13 BY MS. JANUS:  14 Q. Mike Sawyer's knowledge.  15 A. Mike Sawyer's knowledge is dependent on the  16 circumstances; in other words, if he's out  17 promoting something, we wouldn't know that  18 necessarily unless he entered into the sales force  19 that, okay, I'm thinking of an opportunity here.  20 What's relevant is Mike knows that he  21 can't authorize the distribution of software  22 without a contract.  23 Q. Can you answer the question I asked?  24 A. Can I hear the question again?  25 (The question was read back by the court</p> <p style="text-align: right;">Page 46</p>
<p>1 accounting people are advised of it, and so that  2 knowledge then becomes spread. And people like  3 Mike Sawyer or Russ Schreiber know they can't sign  4 contracts. It has to follow the contract process  5 so that we can become fully aware that there are  6 things going on.  7 So do I know on behalf of FICO that Mike  8 Sawyer knew something about the United Kingdom?  9 No.  10 BY MS. JANUS:  11 Q. So as you -- your testimony is that Mike Sawyer  12 did not know about Chubb's use in the United  13 Kingdom?  14 A. I don't know what Mike Sawyer knows.  15 Q. Is it relevant to you in determining what FICO  16 knows about use?  17 A. Again, our process --  18 Q. Answer the question I asked. I'm entitled to an  19 answer to the question I asked.  20 A. Yeah, and I'm answering the question.  21 MS. KLIEBENSTEIN: Could you repeat that  22 question for me?  23 BY MS. JANUS:  24 Q. I'm simply -- I'm trying to understand what FICO's  25 knowledge of use was. That's what the topic is.</p> <p style="text-align: right;">Page 45</p>	<p>1 reporter.)  2 THE WITNESS: And my answer was we look to  3 the records. Mike doesn't have authority, none of  4 the salespeople have authority to say go run off  5 and do something different, and that's because  6 we're honoring not only our policies but because  7 the contract says you need to -- Chubb needs to  8 sign off before they want to be responsible for  9 anything.  10 So if Mike has sales puffery or something  11 like that saying, hey, I think we might be able to  12 solve the problem this way or the other, that's  13 not hugely relevant, no.  14 BY MS. JANUS:  15 Q. Is Mike Sawyer's knowledge of the use of Blaze by  16 Chubb in Europe relevant to you in determining  17 FICO's knowledge of the use of Blaze by Chubb in  18 Europe?  19 A. No, it's not binding on us.  20 Q. What if Mike Sawyer consulted with you about the  21 use of Blaze in Europe?  22 A. If Mike had knowledge of some facts or said X  23 company in Europe wants to use the software, Mike  24 would follow the process of asking -- you know,  25 first following through the sales process to enter</p> <p style="text-align: right;">Page 47</p>

1 in that opportunity into the sales force system  
2 and then he would want to nurture that until it  
3 matured to a level that other people would get  
4 involved.  
5 Q. What if -- that wasn't my question, but what if  
6 Mike Sawyer came to Chubb legal and said Chubb --  
7 can Chubb in Europe use the software --  
8 MS. KLIEBENSTEIN: Objection, calls for  
9 speculation. This is also --  
10 BY MS. JANUS:  
11 Q. -- would that --  
12 MS. KLIEBENSTEIN: -- outside of the  
13 30(b)(6).  
14 MS. JANUS: I don't think it is. I'm trying  
15 to understand the position that FICO did not know  
16 of use in Europe prior to the merger.  
17 MS. KLIEBENSTEIN: But you're asking for  
18 facts, the factual basis in the 30(b)(6), and this  
19 is a speculative question that is making up facts  
20 that are not part of the record.  
21 BY MS. JANUS:  
22 Q. Did -- were you consulted about Chubb's use of  
23 Blaze in Europe prior to the merger?  
24 A. No.  
25 Q. You're absolutely positive about that?

Page 48

1 A. Yes.  
2 Q. Did you review your records to determine whether  
3 you were consulted about it?  
4 A. Following the merger is when we reviewed our  
5 records.  
6 Q. Yeah, that's not my question. I'm asking, did  
7 you review your records to determine whether you  
8 were consulted about Chubb's use of Blaze in  
9 Europe prior to the merger?  
10 A. No.  
11 Q. So that my question is clear, I'm asking at any  
12 time post merger or pre-merger, did you go back  
13 and review your records to determine whether you  
14 were consulted about that issue pre-merger?  
15 A. So you asked -- the first question is post merger.  
16 Yes, we did an investigation and became aware, so  
17 I think that's clear.  
18 Prior to the merger we didn't have a  
19 reason to go back and look, so there was nothing  
20 to look for, no one asked to look for anything.  
21 Q. When you looked back post merger, did you  
22 determine that you had been consulted about  
23 Chubb's use in Europe?  
24 A. I'm not sure I understand your question. Could  
25 you ask a different --

Page 49

1 Q. You investigated post merger, correct?  
2 A. Yes.  
3 Q. Okay. And did that investigation reveal that you  
4 had been consulted about Chubb's use in Europe  
5 prior to the merger?  
6 A. No.  
7 Q. Are you aware that Chubb -- I'm sorry, that FICO  
8 knew that Chubb was considering using Blaze in  
9 Europe prior to the merger?  
10 A. As I mentioned, there's sales chatter and there  
11 were contacts always trying to be made between a  
12 Mike Sawyer or Russ Schreiber or some other sales  
13 person as part of their job, so they would have  
14 been in contact with Chubb & Sons and potentially  
15 other groups like whoever would be Chubb  
16 Corporation entities in Europe because of the  
17 sales process.  
18 Q. And do you know that they were aware that Chubb in  
19 Europe was using Blaze?  
20 A. No, because I previously testified that the  
21 contracts stack is our knowledge base. Prior to  
22 that, unless there's an agreement, we don't know  
23 about it; and we have a process to identify those  
24 agreements.  
25 Q. Okay. Are you aware that Mike Sawyer and Russ

Page 50

1 Schreiber knew that Chubb in Europe was using  
2 Blaze?  
3 A. No.  
4 Q. And is that -- did you -- well --  
5 Showing you what's previously been marked  
6 as Exhibit 73 -- Heather, this is what I'm going  
7 to show him. It's big and I don't have an extra  
8 copy, but we've seen it many times.  
9 MS. KLIEBENSTEIN: Okay.  
10 BY MS. JANUS:  
11 Q. The document previously marked as Exhibit 73 is a  
12 meeting appointment from Mike Sawyer to Ian  
13 Brodie, Richard Hill and Russ Schreiber, correct?  
14 A. The agreement identifies an e-mail appointment  
15 request from Michael Sawyer to Ian Brodie, Richard  
16 Hill and Russ Schreiber, correct.  
17 Q. And the date of the appointment is November 14,  
18 2008, correct?  
19 A. No. November 17, 2008.  
20 Q. Oh, thank you. The date that it was sent is  
21 November 14, 2008, correct?  
22 A. Yes.  
23 Q. Okay. And then the appointment is set for  
24 November 17, 2008, correct?  
25 A. Yes.

Page 51

<p>1 Q. And then at the top of the same page, he says, "I  2 have forwarded this request to the FICO Account  3 Executive for Chubb," right?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And then if you look at the bottom of page -- the  6 page marked 1770, Andy Moffat at FICO writes to  7 Russ Schreiber, and this is on March 26, 2015, it  8 says, "Hi Russ, I hope you are well," and then he  9 talks about a meeting with Chubb in London to do  10 some work with them, and he says, "1. Additional  11 Blaze license for commercial property (European  12 wide)," and then "2. Check if they have Decision  13 Simulator as part of the contract," and then he  14 says, "Can you help here?" Is that right?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. So Andy Moffat at FICO is writing to Russ  17 Schreiber inquiring about getting assistance on  18 selling Chubb Europe additional licenses, right?</p> <p>19 <b>A. Yes, additional Blaze license and Decision  20 Simulator.</b></p> <p>21 Q. And then Russ Schreiber writes back and says,  22 "Chubb has Global ela for Blaze but no simulator,"  23 right?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. So Russ Schreiber concluded that Chubb Europe  Page 100</p>	<p>1 "Chubb has global ela for Blaze."  2 <b>A. Right, he wrote that.</b></p> <p>3 Q. Okay. And then Andy Moffat writes back  4 confirming. He says, "So to summarise there's no  5 additional licensing costs for this except to  6 include Decision Simulator - would that be a  7 regional addition or global?" See that?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And then Russ's response to that is, "I'd sell  10 them regional," right?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And there he's talking about Decision Simulator,  13 right?</p> <p>14 <b>A. I don't know. It doesn't say that.</b></p> <p>15 Q. Well, can you tell that from the question that  16 Andy Moffat asks?</p> <p>17 <b>A. No. I don't know what he's referring to, regional  18 or sales elsewhere.</b></p> <p>19 Q. And then Andy Moffat responds, "Thanks Russ, Can  20 we get an idea of what the license cost for the  21 ELA is and then we can try to work out a cost for  22 Decision Simulator," right?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And that's when Russ responds, "It was done years  25 ago...in multi steps. Rough order of magnitude  Page 102</p>
<p>1 would not need an additional license for Blaze in  2 Europe, correct?</p> <p>3 <b>A. I'm not sure if he concluded that because he says,  4 "You can pull up the contracts" (unintelligible.)</b>  5 THE COURT REPORTER: Wait, can you start  6 over?</p> <p>7 THE WITNESS: Sure.</p> <p>8 THE COURT REPORTER: "I'm not sure if he  9 concluded that because he says, 'you can pull up  10 the contracts and" --</p> <p>11 THE WITNESS: -- "in pramata" --</p> <p>12 P-R-A-M-A-T-A -- "for precise answers." It was  13 done years ago, so he's obviously working off  14 memory.</p> <p>15 BY MS. JANUS:</p> <p>16 Q. Well, let's go through it, see what he's referring  17 to there. So in response to his message that  18 Chubb has global ela for Blaze, Andy Moffat writes  19 back and says, "Thanks Russ, so to summarise  20 there's no additional licensing costs for this  21 except to include Decision Simulator." See that?</p> <p>22 <b>A. No. Which page are you on?</b></p> <p>23 Q. This is the page marked 1770.</p> <p>24 <b>A. Okay.</b></p> <p>25 Q. And in the middle of the page Russ Schreiber says,  Page 101</p>	<p>1 1.5 - 1.9 million. You can pull up the contracts  2 in pramata for precise answers," right?</p> <p>3 <b>A. That's right.</b></p> <p>4 Q. So it appears Russ is saying that in response to  5 the question about license costs for the ELA,  6 right?</p> <p>7 <b>A. It doesn't say that. It just says, "pull up the  8 contracts in pramata for precise answers."</b></p> <p>9 Q. So you can't tell whether -- from the context of  10 the e-mail whether that's what it's referring to?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Based on this e-mail exchange, would you conclude  13 that FICO knew that Chubb Europe was using Blaze  14 as of March of 2015?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Would you conclude that FICO believed that Chubb  17 Europe could use Blaze pursuant to the enterprise  18 license?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Why not?</p> <p>21 MS. KLIEBENSTEIN: Objection, calls for a  22 legal conclusion.</p> <p>23 THE WITNESS: This is not a very clear  24 exchange, number 1; number 2, it's clearly a sales  25 cycle; and number 3, as I've explained,  Page 103</p>



<p>1 Mr. Schreiber is not one of those who has the  2 authority to bind the company. That's limited to  3 a very small group of people.</p> <p>4 And this process would have flowed  5 through to surface, and obviously it never  6 surfaced because I don't believe there's any  7 contracts signed for any of this stuff in the  8 existing agreements that we have.</p> <p>9 BY MS. JANUS:</p> <p>10 Q. When you say that this isn't a very clear  11 exchange, with respect to whether the enterprise  12 license allows the use of Blaze in Europe, would  13 you say it's a clear exchange?</p> <p>14 A. No.</p> <p>15 Q. What is unclear about it?</p> <p>16 A. Mr. Schreiber says, "You can pull up the contracts  17 in pramata for precise answers." He says it was  18 done years ago, so he obviously hasn't looked at  19 anything, so that tells me he hasn't looked at  20 anything, he's just guessing.</p> <p>21 Q. Anything else unclear about the exchange?</p> <p>22 A. Yeah, I'm not even sure what he's talking about  23 for regional or -- regional or -- he says, "I'd  24 sell them regional." I don't know what that  25 means.</p> <p style="text-align: right;">Page 104</p>	<p>1 Q. So this is just a few days after that?</p> <p>2 A. Like five days later.</p> <p>3 Q. And in this e-mail -- and -- apologies, Andy  4 Moffat is a senior account executive at FICO  5 located in London, correct?</p> <p>6 A. That's what his address says, yes.</p> <p>7 Q. And in this e-mail, Mr. Moffat writes to Hamish at  8 Chubb and says, "Please see the attached proposal  9 for the licensing costs and associated training  10 for Decision Simulator. The prices are heavily  11 discounted in line with the existing Blaze  12 contract. No additional Blaze license(s) are  13 needed as it is covered within the overall global  14 Blaze ELA." Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. So based on this e-mail, would you conclude that  17 FICO believed that use of Blaze in Chubb Europe  18 was allowed under the license?</p> <p>19 A. No, I wouldn't conclude that.</p> <p>20 Q. And why is that?</p> <p>21 A. This is a sales guy, and there's just a layer of  22 people relying what other people think all the way  23 down the line, so I don't know if he's even looked  24 at the contract and he's not in a position to  25 judge anyway.</p> <p style="text-align: right;">Page 106</p>
<p>1 Q. And Decision Simulator, that's like an add-on  2 software to Blaze; is that correct?</p> <p>3 A. Honestly I don't know the answer to that. It's a  4 product. That's as much as I know.</p> <p>5 Q. But it's a separate product from Blaze?</p> <p>6 A. Yes.</p> <p>7 Q. And do you know whether Decision Simulator can  8 only be used in connection with Blaze?</p> <p>9 A. I don't know.</p> <p>10 Q. Showing you what's been attached -- what's been  11 previously marked as Exhibit 60, this is -- let me  12 know when you've had a chance to take a look at  13 it.</p> <p>14 A. Okay.</p> <p>15 Q. Have you seen this document before?</p> <p>16 A. No.</p> <p>17 Q. This is an exchange between -- well, let's look at  18 the second e-mail on Exhibit 60 which is an e-mail  19 from Andy Moffat to Hamish at Chubb, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And it's dated April 1, 2015, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And the e-mail we were looking at that's marked as  24 Exhibit 57 was dated March 26, 2015, correct?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 105</p>	<p>1 Q. If you look at the attachment to the e-mail, there  2 is a formal proposal attached, right?</p> <p>3 A. Yes, it says, "This document is FICO's proposal."</p> <p>4 Q. And he certainly would have needed approval from  5 higher-ups to make a proposal like this, correct?</p> <p>6 A. No. The system is automated where they're given  7 pricing, they have a pricing engine and then they  8 can discount based upon a certain amount of  9 parameters, so I can't tell any of that here, but  10 he could have definitely made a proposal on his  11 own.</p> <p>12 Q. And the proposal assumes that the Blaze Advisor  13 enterprise license applies to Chubb Europe,  14 correct?</p> <p>15 A. The asterisk says, "Assuming that Chubb have  16 already had Blaze Fundamentals and RMA training."  17 I don't see anything about underlying license.</p> <p>18 Q. Well, if you look at subpart B, Project  19 Requirements --</p> <p>20 A. Yes.</p> <p>21 Q. -- it says, "Decision Simulator to be included in  22 existing Blaze ELA contract."</p> <p>23 A. Uh-huh.</p> <p>24 Q. Do you see that?</p> <p>25 A. Uh-huh.</p> <p style="text-align: right;">Page 107</p>

1 Q. Yes?

2 **A. Yes, I do. There's a bullet there.**

3 Q. Okay. So does that indicate to you that the

4 proposal also consistent with the e-mail is made

5 on the premise that the Blaze enterprise license

6 applies to Chubb Europe?

7 **A. That appears to be what Andy Moffat thinks, again,**

8 **based upon this chain of e-mails, but one**

9 **person doesn't -- nobody has read the contract and**

10 **they just keep remembering certain things, so it's**

11 **just a proposal.**

12 Q. Who would need to have approved this for you to

13 say that FICO knew that Chubb Europe was using

14 Blaze and the license covered Chubb Europe?

15 MS. KLIEBENSTEIN: Objection, calls for a

16 legal conclusion.

17 THE WITNESS: It goes through a process --

18 there's a whole number of steps of processes, and

19 at a particular point in that process it needs to

20 go in front of the finance group, it needs to go

21 in front of the legal group, it needs to manifest

22 itself in a signed agreement. Until there's a

23 signed agreement, it's nothing.

24 BY MS. JANUS:

25 Q. Well -- so here we're talking about -- or I should

Page 108

1 say -- I'm talking about Exhibit 60, and Andy

2 Moffat has sent an e-mail about an existing

3 license, right?

4 **A. No, it says what it says.**

5 Q. And I asked a question.

6 **A. He says that he wants to sell a proposal for**

7 **licensing training for Decision Simulator, and he**

8 **references what he believes is an overall global**

9 **Blaze ELA.**

10 Q. Right. And so my questions for you have been

11 about his statement relating to the existing

12 global Blaze ELA. Do you understand that?

13 **A. Uh-huh.**

14 Q. Yes?

15 **A. Yes.**

16 Q. Okay. And so his statement is, "No additional

17 Blaze license(s) are needed as it is covered

18 within the overall global Blaze ELA," right?

19 **A. That's what he says, yes.**

20 Q. Okay. So my question for you is, who -- and your

21 position has been that this statement is not

22 binding on FICO because Andy Moffat is a senior

23 account executive, right?

24 **A. He does not have authority to sign contracts, no.**

25 **He can't bind the company.**

Page 109

1 Q. Right, but is your position -- my question was

2 different than that. My question was, is it your

3 position that this statement "No additional Blaze

4 license(s) are needed as it is covered within the

5 overall global Blaze ELA" is not binding on FICO

6 because Andy Moffat is a senior account executive?

7 **A. Right, he's just the senior account executive and**

8 **they don't have authority to bind the company.**

9 Q. Okay. Now, who would have needed to approve this

10 position relating to Chubb's use of Blaze in

11 Europe for it to be binding on FICO?

12 **A. Like I said, it would go through a process and**

13 **then be incorporated into an agreement and then a**

14 **number of people would have to approve it, so the**

15 **finance people would have to approve it, the**

16 **product person has to approve it, the legal folks**

17 **have to approve it; and that would be in general.**

18 **At a minimum, those folks would have to approve**

19 **it.**

20 Q. But how does that apply when you already have an

21 agreement that's being discussed?

22 **A. It works exactly the same way every time and you**

23 **end up with a contract, either a Statement of**

24 **Work, a licensed schedule or some other contract**

25 **signed by both parties.**

Page 110

1 Q. Right, but this statement he's making is about an

2 existing enterprise license agreement, right?

3 **A. But he's still talking -- first of all, he's**

4 **obviously mistaken, right, because of that set of**

5 **errors I guess that I referred to, but it's also**

6 **adding onto an existing agreement, so the whole**

7 **thing gets refiltered again through the approval**

8 **process.**

9 Q. And I'm just -- I'm really just asking about how

10 that would apply, how your analysis would apply

11 where there's no --

12 He's not talking about entering into

13 another Blaze enterprise license agreement, right?

14 He's talking about the existing Blaze enterprise

15 license agreement?

16 **A. That's what he thinks.**

17 Q. Okay. And so is it your position that it really

18 doesn't matter what anyone at FICO said to anyone

19 at Chubb about the existing enterprise license

20 agreement or the scope of the agreement?

21 **A. What I'm saying is that the parties both agreed**

22 **that the only thing that's binding is something**

23 **signed by both parties. Everything else is just**

24 **conversations and informational.**

25 **So Andy is not allowed to bind the**

Page 111



<p>1 company, and Chubb Corporation or whoever is going  2 to sign it knows their own contract says, no, we  3 don't want anything unless we have a signed  4 agreement. That's what the parties agreed.  5 Q. Would it change your analysis of the proposal if  6 it was sent to Bill Wade for approval prior to  7 being sent to Chubb?  8 <b>A. No, because Bill Wade is not authorized to sign  9 contracts.</b>  10 Q. Would it change your analysis if it was sent to  11 legal, to FICO legal, prior to being sent to  12 Chubb?  13 <b>A. No.</b>  14 Q. Why not?  15 <b>A. We just sent it to them. They'd still have to  16 work on it and it still would have to go through  17 the process. That process, like I said, is you  18 review the existing agreement, you get approvals  19 from the product people, from the professional  20 services people if there's implementation work,  21 the training people if there's training involved,  22 the finance people, and then an authorized person  23 in sales, so you have to get all of them in order  24 for it to go through.</b>  25 Q. So if legal had approved the Decision Simulator</p> <p style="text-align: right;">Page 112</p>	<p>1 Q. With whom?  2 <b>A. It's between Fair Isaac Corporation and Chubb &amp;  3 Son, a division of Federal Insurance Company.</b>  4 Q. Does this license provide FICO with certain audit  5 rights?  6 <b>A. Give me a moment, please. There's a Provision 3.5  7 that refers to it, yes.</b>  8 Q. What are the audit rights that FICO had under the  9 license agreement?  10 <b>A. It indicates, "On Fair Isaac's written request,  11 Client shall provide to Fair Isaac a written  12 certification executed by an authorized officer of  13 Client that provides the following information:  14 verification that Fair Isaac Products are being  15 used in accordance with the provisions of this  16 agreement, a list of the locations which the Fair  17 Isaac Products are or have been operated in the  18 preceding twelve month period; and (iii), the  19 number of Seats, CPU's or applications accessing  20 or utilizing the Fair Isaac Products (as  21 applicable)."</b>  22 Q. Did Fair Isaac ever exercise its verification in  23 audit rights under the license agreement?  24 <b>A. No.</b>  25 Q. Why not?</p> <p style="text-align: right;">Page 114</p>
<p>1 proposal, that would not make a difference to you  2 in terms of your analysis of whether FICO knew  3 that Chubb in Europe was using Blaze?  4 <b>A. No, legal doesn't approve proposals. Legal  5 approves contracts.</b>  6 Q. In terms of FICO's knowledge of Chubb Europe's use  7 of Blaze, does Exhibit 60 show you that FICO knew  8 about the use of Blaze in Europe as of April of  9 2015?  10 <b>A. I don't know what Chubb in Europe was doing in  11 2015. This document doesn't seem to confirm it  12 one way or the other to me.</b>  13 Q. So the answer is no, Exhibit 60 does not --  14 <b>A. No.</b>  15 Q. -- indicate to you that FICO knew that Chubb  16 Europe was using Blaze?  17 <b>A. No.</b>  18 Q. Let's talk about audits. I'm showing you what's  19 been marked as Exhibit 314.  20 <b>A. Okay. Thank you.</b>  21 Q. I take it you recognize this document?  22 <b>A. I do.</b>  23 Q. What is it?  24 <b>A. This is a Software License and Maintenance  25 Agreement for Blaze Advisor.</b></p> <p style="text-align: right;">Page 113</p>	<p>1 <b>A. Most of our clients are longstanding and we only  2 use that when a dispute comes up, so there wasn't  3 any reason to do that. We didn't have a dispute  4 with them until the merger.</b>  5 Q. Who makes the decision on behalf of FICO to  6 exercise audit rights?  7 <b>A. That would be typically the senior executives, so  8 somebody who was authorized to sign the contracts  9 or had any VP title in combination with people who  10 would be able to effectuate the audit, the right  11 people who understand what this is; and then the  12 legal department would be involved typically too.  13 These are rare.</b>  14 Q. So senior executives and then you said the people  15 to implement the audit?  16 <b>A. Yeah, so if -- somebody has to write a letter, and  17 it's usually from a business group saying please  18 confirm. So that's what I mean by -- I don't know  19 who that would be, but --</b>  20 Q. Please confirm?  21 <b>A. What your use is in accordance with 3.5.</b>  22 Q. Why are they only used if there's a dispute?  23 <b>A. Well, we trust our customers. We talk to them,  24 you know, fairly regularly, as we discussed,  25 through the client partner and have very</b></p> <p style="text-align: right;">Page 115</p>